



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 18, 1991

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-16

Edward D. Feigenbaum  
Attorney at Law  
P.O. Box 383  
Noblesville, IN 46060

Dear Mr. Feigenbaum:

This responds to your letter dated March 14, 1991, as supplemented by four other letters (dated March 31, April 21, 29 and 30, 1991), requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed publication of a campaign finance database.

You plan to create, publish, and sell a campaign finance database for Indiana state and legislative offices. You state that there are "some Indiana political committees that are registered with the Federal Election Commission, but which also engage in activity within the State of Indiana." The database and your publication would detail individuals, Indiana political committees, candidates, and other persons that have contributed to such committees, the amounts contributed, and the recipient entities. You also plan to detail individuals, candidates, Indiana political committees, and other persons that are the payees of expenditures made by such committees. You state that you do not intend to publish street addresses, but do intend to publish the cities and states of contributors and payees of expenditures. You explain that the "information will help Hoosiers understand more about who is financing campaigns and in what amounts."

You intend to obtain this information from reports filed with the Indiana State Election Board ("the State Board"). According to your request, Indiana law requires that Indiana political action committees file periodic reports of their financial activity with the State Board. You explain that Indiana law permits an Indiana political action committee, which is registered and files reports with the Commission, to comply with the Indiana reporting requirements by filing duplicates of its FEC Form 3-X (i.e., for political committees not authorized by a Federal candidate) with the State Board, instead of using Indiana campaign finance reporting forms.<sup>1</sup> The relevant Indiana

statute provides that such a "duplicate must cover all activity of the committee, and the committee shall file a supplementary report as directed by the state election board to provide information required by . . . [State law] but not included in the federal report." Ind. Code 3-9-5-13 (1990) State law requires itemization of contributions to and expenditures by a committee in excess of \$100. Id. 3-9-5-14. You state that, as a practical matter, the supplement may appear in the form of additional names of contributors added to the end of the FEC Schedule A, or in a separate statement appended to the Schedule A.

You ask whether the Act and Commission regulations permit you to engage in the proposed activity.

The Act requires that each political committee disclose the identification of each individual who makes a contribution to the reporting committee and whose aggregate contributions exceed \$200 for the calendar year. 2 U.S.C. 434(b)(3)(A). Each political committee must also disclose the identification of each person to whom expenditures aggregating in excess of \$200 for the calendar year were made. 2 U.S.C. 434(b)(5)(A). The Act requires the Commission to make the committee reports available for public inspection and copying "except that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee." 2 U.S.C. 438(a)(4); 11 CFR 104.15(a). The Act and Commission regulations also provide that a political committee, other than an authorized committee, is required to file with the secretary of state (or equivalent state officer) of the appropriate state that portion of its report applicable to candidates seeking election in that state. 2 U.S.C. 439(a)(2)(B); 11 CFR 108.3. Commission regulations clarify that the prohibition on sale or use for solicitation or commercial purposes applies to such reports. 11 CFR 104.15(a).

Commission regulations provide that the use of information, copied or obtained from these reports, in newspapers, magazines, books or similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes. 11 CFR 104.15(c). The Commission has previously stated that the principal purpose of restricting the sale or use of information copied from reports is the protection of individuals who have contributed to political committees from having their names sold or used for commercial purposes. Advisory Opinions 1989-19, 1986-25, 1981-38, and 1980-101. The Commission has permitted a publisher to copy from reports the names and addresses of candidates, campaign workers and consultants, and firms or individuals who have provided services to the campaigns, in order to provide leads for news articles and other information for use in a newsletter and to solicit subscriptions. The Commission based its decision on the representation that information relating to individual contributors would not be used. Advisory Opinion 1981-38. In addition, the Commission has permitted the proposed sale of a directory of comprehensive information concerning PACs obtained from documents filed with the Commission, stating that any of the information found in such documents may be used, except for information identifying individual contributors. Advisory Opinion 1980-101.

Based upon the apparent purpose of the prohibition, therefore, the Commission concludes that nothing in the Act or regulations prohibits the publication for sale of the names of individuals and entities who receive disbursements from political committees, unless those reported payees reflect the disposition of in-kind contributions made by individuals, or refunds of previous contributions made by individuals. See 11 CFR 104.13(a)(2) and 104.3(b)(3)(iv).

With respect to your ability to sell information as to contributors who are individuals, i.e., the class of persons protected by the Act, the Commission looks to the source of the information being copied. The Commission has contrasted the use of a committee's own list of previous contributors with the use of reports filed by a committee with the Commission. The Commission has stated that, although section 438(a)(4) would not prohibit a political committee from selling or renting its own contributor list for use by someone else to solicit contributions, it does prohibit the use of any list to solicit contributions which is copied or otherwise obtained from disclosure reports filed under the Act, even when the filing committee has "authorized" the copying of that report. Advisory Opinion 1979-3. See also Advisory Opinion 1977-66.

You inform us that Indiana statutes permit a Federal political committee which is also a state political action committee to comply with Indiana filing requirements by submitting, to the State Board, a copy of the report filed with the Commission. Even though filing with the State Board is not required under the Act and the committee is submitting a copy of its Federal filing as an alternative method of complying with Indiana statutes, a committee's state filing is still a copy of a report the use of which was meant to be limited by the Act. State law provisions permitting its filing in places other than the Commission and the office of the Secretary of State do not lessen that protection. The limited protection afforded individual contributors who are disclosed under the Act is meaningless if that protection depends upon where the reports are filed.

The Commission notes that the names of those contributing between \$100 and \$200 could appear on the FEC Form 3-X, submitted as the state filing, if said names were added to the Federal filing made pursuant to the Act. As such, those added names will not be protected by 2 U.S.C. 438(a)(4). If the political committee chooses, however, to file a report with the Commission that includes contributors between \$100 and \$200 in order to comport, as a matter of convenience, with its filing with the State Board, then those entries are still protected by 2 U.S.C. 438(a)(4).<sup>2</sup> Regardless of the reason for the itemization, the entries are still part of a copy of a report filed with the Commission.

You have stated that you propose to sell the database publication, as opposed to donating it without charge. The Commission therefore assumes that you propose to conduct a business venture for profit. As such, you intend to use the names of the contributors who are individuals, along with their cities and states, for commercial purposes. As stated above, the regulations permit the use of contributor information obtained from the reports in newspapers, magazines, books, or similar communications so long as the principal purpose is not to communicate such information for soliciting contributions or other commercial purposes. 11 CFR 104.15(c). Your use of the contributor information from the committee reports is not merely incident to the sale; the contributor information is, in fact, what you intend to sell. See Advisory Opinion 1986-25.

The Commission also notes your statement that the information will help Hoosiers understand more about who is financing campaigns and in what amounts. A logical and foreseeable consequence of the presentation of such information and promoting sales of the publication, particularly when such information is one of the principal purposes of the database, is that those involved in Indiana political campaigns would purchase the product to obtain names of likely contributors. Such use of names from reports filed with the Commission is directly contrary to the intent of section 438(a)(4).

Based on the foregoing, the Commission concludes that your publication may not be sold or otherwise offered for commercial use if it includes information listing individual contributors obtained from the copies of reports filed with the Commission or the Secretary of State.<sup>3</sup>

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

John Warren McGarry  
Chairman for the Federal Election Commission

Enclosures (AOs 1989-19, 1986-27, 1986-25, 1981-38, 1980-101, 1979-3, and 1977-66)

1/ Your request implicitly requires the Commission to assume that an Indiana political action committee, which comes within the purview of Indiana statutes, would also qualify as a "political committee" under the Act and Commission regulations. To the extent that such a political committee may be subjected to State filing requirements with respect to contributions it receives and expenditures or contributions it makes to influence any Federal election, it may have a valid claim to Federal preemption under 2 U.S.C. 453. See Advisory Opinion 1986-27. The Commission does not, however, reach any Federal preemption questions here because your request is made solely on your own behalf and presents a complete factual situation only with respect to the issue of whether you are permitted to use contributor information obtained from reports filed by a Federal political committee pursuant to the Act. 11 CFR 112.1(b) and 112.1(c).

2/ Commission regulations specifically permit a political committee to itemize more contribution information than is required by the Act or regulations. 11 CFR 104.3(a)(4)(i).

3/ As indicated above, this proscription would not apply to the use of information identifying political committees that made contributions. See Advisory Opinion 1980-101.